IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2552 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JOGENDRASINH CHANDRAPALSINGH CHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2552 of 2001

MS KRISHNA U MISHRA for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated March 8, 2001, Annexure A to the petition, detained the petitioner

detenu.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2 (c) of the Act as three cases for the commission of offences under Chapter XVII of the Indian Penal Code are registered against him which are pending investigation and statements of two witnesses are recorded against him. According to the detaining authority, the activities of the detenu are detrimental to the maintenance of public order, therefore, the detaining authority has exercised the powers under Section 9 (2) of the Act by not disclosing the identity of the witnesses while passing the order of detention and detained him.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate order or direction quashing and setting aside the order of detention and prayed to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Ms. Mishra, learned advocate for the petitioner, has restricted her arguments to the fact that the privilege claimed by the detaining authority under Section 9 (2) of the Act cannot be said to be genuine. To bring home her aforesaid submission, reliance is placed on the statements of two witnesses which are recorded on March 5, 2001 and March 6, 2001, which are verified by the detaining authority on March 7, 2001 and the order of detention came to be passed on March 8, 2001, that is, on the next day. Therefore, according to her, it can be said that the detaining authority has not exercised the powers under Section 9 (2) of the Act properly as he had no sufficient time to examine the statements of the witnesses. Besides this, so far as registration of three cases for the commission of offences under Chapter XVII of the IPC are concerned, they are not related to breach of public order but they are related to maintenance of law and order situation. Therefore, on this ground also the subjective satisfaction arrived at by the detaining authority cannot be said to be legal and valid. On aforesaid two premises, she urged to allow the petition by quashing and setting aside the impugned order of detention and to set the petitioner at liberty forthwith.

5. Mr. K.T. Dave, learned AGP opposed the

petition. He, however does not dispute the factual aspect with regard to recording of statements of the witnesses, verification by the detaining authority and passing of the impugned order of detention on the very next day. So far as claiming of privilege under Section 9 (2) of the Act is concerned, he tried to justify it as the reply affidavit sworn by Mr. P.C. Pande, Police Commissioner, Ahmedabad City is on record wherein it is clearly stated in detail as to how the privilege is claimed by the detaining authority by not disclosing the identity of the witnesses. He, however, urged to pass appropriate orders in light of the settled principles of law enunciated by the Apex Court and this Court.

6. I have considered the submissions advanced by the learned advocates for the parties. I have perused the averments made in the petition and the documents annexed therewith and the impugned order of detention as well as the judgments cited at the bar.

7. In Kalidas Chandubhai Kahar v. State of Gujarat, 1993 (2) GLR 1659, statements of the witnesses were recorded on October 16, 1992 and order of detention was passed on October 17, 1992 and a Division Bench of this Court has observed that the power under section 9 (2) of the Act was improperly exercised and was held to be detrimental to the right of the detenu to make an effective representation contemplated under Article 22 (5) of the Constitution and therefore the detention order was quashed.

8. Applying the aforesaid principle laid down by the Division Bench of this Court to the facts of the present case, it is clear that the present case is identical to the facts of that case. In the present case, at the cost of repetition, be it stated that statements of two witnesses were recorded on March 5, 2001 and March 6, 2001 and they were verified by the detaining authority on March 7, 2001 and the order of detention came to be passed on the next day, that is, March 8, 2001. Therefore, the order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

9. So far as registration of three cases for commission of the offences under Chapter XVII of the Indian Penal Code is concerned, accusation therein against the detenu is commission of offence under section 379 of the Indian Penal Code. Therefore, according to me, they cannot be called cases relating to breach of public order. At the most they can be called as breach of law and order situation and therefore the subjective

satisfaction arrived at by the detaining authority cannot be considered to be legal or valid.

10. Similar question arose before a Division Bench of this Court in the case of Ashokbhai Jivabhai v. Police Commissioner, 2000 (1) GLR 816 and before a learned Single Judge in the case of Renubhai Bikhabhai Vekaria v. State of Gujarat, 2000 (3) GLR 2696. In both the aforesaid cases this Court has observed that the cases registered against the petitioner cannot be called to be falling in the realm of public order. In the instant case applying the principles laid down by the Division Bench of this Court in Ashokbhai's case (supra) as well as learned Single Judge in Renubhai's case (supra), it is clear that in the present case also offence registered against the petitioner is for commission of offence under Section 379 of the Indian Penal Code and therefore the cases registered against the petitioenr cannot be said to be falling in the realm of public order. On this ground also the impugned order of detention is vitiated and deserves to be quashed and set aside.

11. Seen in the above context, the impugned order of detention cannot be sustained and it deserves to be quashed and set aside and the petition deserves to be allowed.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

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